**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT :**

**THE HONOURABLE MR. JUSTICE V.GIRI**

**WEDNESDAY, THE 3RD OCTOBER 2007 / 11TH ASWINA 1929**

**WP(C).No. 21460 of 2006(D)**

**PETITIONER:**

**SOSAMMA THOMAS, W/O.THOMAS,**
**AGED 66 YEARS, THOPPIL PARAMBIL HOUSE,**
**AMBADIMALA, MULANTHURUTHY, ERNAKULAM,**
**FULL TIME SWEEPER (RTD), AMBALLOOR GRAMA**
**PANCHAYAT.**

**BY ADV. SRI.P.R.RAMACHANDRA MENON**
**SRI.M.K.THANKAPPAN**

**RESPONDENTS:**

**1. STATE OF KERALA, REP. BY THE**
**SECRETARY TO THE DEPARTMENT OF LOCAL**
**ADMINISTRATION, GOVERNMENT SECRETARIAT,**
**THIRUVANANTHAPURAM.**

**2. DIRECTOR OF PANCHAYATHS,**
**GOVT. OF KERALA, THIRUVANANTHAPURAM.**

**3. DEPUTY DIRECTOR OF PANCHAYATHS,**
**CIVIL STATION, KAKKANADU.**

**4. THE SECRETARY,**
**AMBALLOOR GRAMA PANCHAYATH, AMBALLOOR,**
**KANJIRAMATTOM P.O.**

**5. THE DEPUTY DIRECTOR,**
**LOCAL FUND AUDIT, CIVIL STATION,**
**KAKKANADU.**

**BY ADV. SRI.K.N.CHANDRABABU --- R4**
**GOVERNMENT PLEADER SRI. P.NANDAKUMAR**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 03/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

**WP(C) NO: 21460/2006 D**

**APPENDIX**

**PETITIONER'S EXHIBITS**

**EXT.P1. COPY OF THE APPOINTMENT ORDER GO RT NO. 789/87 L& D BY THE R1.**

**EXT.P2. COPY OF THE ORDER NO. E3/90/90 DT. 15/10/90 PROMOTING THE PETITIONER AS FULL TIME SWEEPER.**

**EXT.P3. COPY OF THE GO P NO. 95/LAD DT. 6/1/95 BY THE R1 PROVIDING THE SCALE OF PAY APPLICABLE TO THE LAST GRADE SERVANTS OF GOVT. DEPARTMENTS TO THE FULL TIME CONTINGENT EMPLOYEES OF THE PANCHAYAT.**

**EXT.P4. COPY OF THE REPRESENTATION DT. 28/11/05 BY THE PETITIONER TO THE R2 FOR RELEASING THE RETIREMENT BENEFITS.**

**EXT.P5. COPY OF THE LETTER FL (PEN. 2) 702/05 DT. 12/6/05 BY THE R5 DIRECTING THE R4 TO REFIX THE AVERAGE PAY OF THE PETITIONER.**

**EXT.P6. COPY OF THE ORDER NO. E. 10289/05 DT. 2/3/06 BY THE R3 FOR FIXING THE BASIC PAY OF THE PETITIONER AS RS. 793.75/-**

**EXT.P7. COPY OF THE ORDER NO. D. 173/06 DT. 4/4/06 BY THE R3 FOR FIXING THE BASIC PAY OF THE PETITIONER RS. 825/-**

**EXT.P8. COPY OF THE REPRESENTATION DT. 22/4/06 BY THE PETITIONER BEFORE THE R3 FOR RELEASING HER RETIREMENT BENEFITS.**

**EXT.P9. COPY OF THE LETTER NO. E. 5/ 10289/05 DT. 23/5/06 BY THE R3 REJECTING EXT. P8.**

**EXT.P10. COPY OF THE LETTER NO. A. 318/06 BY THE R4 DIRECTING THE PETITIONER TO REFUND THE ALLEGED EXCESS AMOUNT.**

**EXT.P11. COPY OF THE GO MS NO. 135/06 LSGD DT. 12/6/06 BY THE R1/GOVT., ISSUSING NECESSARY DIRECTIONS TO THE R2.**

**RESPONDENT'S EXHIBITS**

**EXT.R4A. COPY OF THE ORDER NO. LFE PEN 2/702/2005 DT. 12/08/05.**

**EXT.R4B. COPY OF THE ORDER NO. LFE PEN 2/ 1394/2005 DT. 12/1/2006.**

**EXT.R4C. COPY OF THE ORDER NO. E.5/10289/05 DT. 2/3/06.**

**EXT.R4D. COPY OF THE STATEMENT PREPARED BY THE PANCHAYAT.**

**EXT.R4E. COPY OF THE STATEMENT SHOWING THE CREDIT OF EARNED LEAVE ENTITLED TO THE PETITIONER.**

*True copy*

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**V.GIRI, J.**

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**W.P.(C).No.21460 of 2006 D**

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**Dated this the 3rd day of October, 2007.**

## JUDGMENT

The petitioner entered service as a part-time Sweeper on 1.8.1971. Her services were regularised with effect from 4.3.1987 as per Ext.P1 order. As per Ext.P2 she was promoted as Full-time Sweeper. Under Ext.P3 order, the Government granted an option to Full-time Sweepers, who have not opted to the Pension Scheme to continue till 65 years without pensionary benefits and without pay revision also.

2. The petitioner continued beyond the age of 55 years, but drew wages in the scale of pay applicable to last grade servants. She retired at the age of 65 years on 31.7.2005. She was entitled to retirement benefits viz., the Death cum Retirement Gratuity and leave surrender dues. She was intimated as per Ext.P10 that she was not entitled to draw wages in the scale of pay applicable to last grade servants, after she crossed the age of 55 years and therefore, she was directed either to refund an amount of Rs.13,494/- or it was suggested that the said amount will be recovered from the Death cum Retirement Gratuity due to her.

3. Later the Government issued Ext.P11 order dated 12.6.2006 by which it was decided that the pensionary benefits due to Full-time contingent employees, who continued in service after superannuation will be fixed taking into account their services till the date of discharge. Pension will be granted after they retire from the service finally.

4. In the light of Ext.P11 order, the stand taken in Ext.P10 will have to be reconsidered.

In the circumstances, after hearing the learned counsel for the petitioner and the learned Senior Government Pleader Sri.Nandakumar, the writ petition is disposed of directing the 3rd respondent Deputy Director of Panchayats to compute the retirement benefits due to the petitioner, in the light of Ext.P11 order. If as per Ext.P11 order recovery of the wages drawn by the petitioner in the scale oif pay available to the last grade servants is dispensed with in relation to the period of service rendered by the petitioner after she had attained the age of 55 years, then obviously a direction for refund of the said amount will have

to be withdrawn. Fresh orders may, therefore, be passed by the 3rd respondent after hearing the petitioner in the light of Ext.P11 order within a period of two months from the date of receipt of a copy of this judgment. Once such orders are passed, the retirement benefits due to her by way of Death cum Retirement Gratuity and leave surrender, along with the applicable dearness allowance shall be disbursed to her within one month from the date of passing fresh order. If the retirement benefits is not disbursed within the aforementioned period, she will be entitled to get interest at the rate of 7% per annum for the period thereafter, till the date of actual payment.

Sd/-

**(V.GIRI)**

**JUDGE**

sk/

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